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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.**

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*Federal Communications Commission
Office of Secretary*

In the Matter of)

Broadband PCS C and F Block)

Installment Payment Issues)

WT Docket No. 97-82

DA 97-679

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BLACK OWNED BROADCASTERS, INC.**

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF
BLACK OWNED BROADCASTERS, INC.**

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June 23, 1997

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List A B C D E

TABLE OF CONTENTS

	<u>Page</u>
I. RESTRUCTURING C AND F BLOCK DEBT IS IN THE PUBLIC INTEREST BECAUSE IT WILL FURTHER THE COMMISSION'S GOALS OF FOSTERING CONTINUED PROVISION OF TELECOMMUNICATIONS SERVICES BY DESIGNATED ENTITIES	2
II. THE CURRENT INSTALLMENT PAYMENT PLAN CONSTITUTES A MARKET ENTRY BARRIER FOR DESIGNATED ENTITIES	4
III. CONCLUSION	7

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Block Installment)	DA 97-679
Payment Issues)	
)	

**COMMENTS OF THE
NATIONAL ASSOCIATION OF BLACK-OWNED BROADCASTERS, INC.**

The National Association of Black-Owned Broadcasters, Inc., ("NABOB"), by its attorneys, hereby submits its Comments in the above-captioned proceeding.

NABOB is a trade association that represents the interests of African American owned communications entities throughout the United States. NABOB's membership is made up of business entities from a broad cross-section of communications services in addition to its broadcast membership. Several NABOB members have won licenses in the broadband PCS C and F Block auctions.

NABOB has two principal objectives: (1) to increase the number of African American owners of communications facilities, and (2) to improve the business climate in which African American owned communications facilities operate. The issues raised in this proceeding are fundamental to the interests of NABOB because financing issues are directly linked to minority access to the capital markets. As NABOB stated in its Comments in the Commission's proceeding

regarding market entry barriers, access to capital is a persistent barrier to business ownership for African Americans.¹ NABOB, on behalf of its members, has a substantial interest in this proceeding.

I. RESTRUCTURING C AND F BLOCK DEBT IS IN THE PUBLIC INTEREST BECAUSE IT WILL FURTHER THE COMMISSION'S GOALS OF FOSTERING CONTINUED PROVISION OF TELECOMMUNICATIONS SERVICES BY DESIGNATED ENTITIES

In implementing Section 309(j) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996 ("the Act"), which establishes the use of competitive bidding in the license process, the Commission sought to select appropriate rules and procedures by which to serve its basic policy goals and achieve the Congressional objectives that were clearly established by the Act.² Although the Commission had no actual experience with auctions at the time the *Second R & O* was drafted, the Commission's purpose was to develop competitive bidding rules which, in combination with spectrum allocation rules, would promote the public policy objectives set forth in § 309(j) of the Act.³

Section 309(j)(3)(B) provides for the promotion of opportunity and competition by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, women and minorities (collectively, "designated entities"). Section 309(j)(4)(A) directs the Commission to consider alternative payment schedules and methods

¹ See NABOB Comments filed October 15, 1996, In re *Section 257 Proceeding to Identify and Eliminate Market Entry Barriers for Small Businesses, Report*, (hereinafter, "*Section 257 Report*") GN Docket No. 96-113, Released May 8, 1997, at 4.

² In re *Implementation of Section 309(j) of the Communications Act--Competitive Bidding, Second Report and Order*, 9 FCC Rcd 2348, 2350, ¶¶ 8-9, (1994) (hereinafter "*Second R & O*").

³ *Id.* at ¶ 3.

ensure the participation of designated entities in spectrum-based services, the Commission is to consider the use of tax certificates, bidding preferences, and other procedures. The Commission found that installment payments would be consistent with Congress's policy objective of guaranteeing participation in the competitive bidding process and in the provision of spectrum-based services by designated entities.⁴ The Commission instituted installment payments, therefore, as a means of encouraging participation by designated entities in both auctions and as providers of spectrum-based services, specifically personal communications services.⁵

The *Second R & O* indicates that the Commission believed that installment payments would minimize the effects of lack of access to capital by women- and minority-owned small businesses.⁶ The Commission also noted that installment payment plan would be the same as an extension of credit to successful bidders. While the Commission apparently believed that this would reduce the amount of private financing needed, in fact, the most crucial factors in obtaining any amount of additional financing are the structure and terms of existing debt. Unfortunately, the financial markets have revealed serious flaws in the current terms by which the installment payments are to be made. Therefore, NABOB respectfully requests that the Commission alter the current payment terms by allowing C and F Block licensees to elect the following new terms:

- Defer all payments without any accrual of interest for the first five years of the license term,

⁴ *Id.* at ¶¶ 227, 229.

⁵ *Id.*

⁶ *Id.* at ¶ 232.

- Require interest-only payments in year six,
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and
- Require full payment of outstanding principal and interest at maturity.

In view of the financing problems facing C Block licensees, restructuring the current installment payments is essential in order to fulfill the Congressional objectives of ensuring participation of designated entities in the provision of spectrum-based services and corresponding Commission policies. NABOB believes that this proposal represents not only the best solution to the financing problems faced by designated entities who obtained licenses in the C Block auction, but also one that meets the Commission's public interest policies and preserves the funds promised to the U.S. Treasury.

II. THE CURRENT INSTALLMENT PAYMENT PLAN CONSTITUTES A MARKET ENTRY BARRIER FOR DESIGNATED ENTITIES

Section 257(a) of the Act mandates the elimination of market entry barriers for entrepreneurs and other small businesses in the provision of telecommunications services, and in the provision of parts and services to providers of telecommunications services and information services. However, every impediment to participation by small businesses in the telecommunications industry does not qualify as a "market entry barrier."⁷ Section 257(a) "... is primarily intended to encompass *those impediments to entry within the Commission's jurisdiction that justify regulatory intervention* because they so significantly distort the operation of the market and harm consumer welfare."⁸

⁷ *Section 257 Report*, ¶13.

⁸ *Id.* at ¶ 16 [emphasis added].

Removing such impediments will facilitate the entry and expansion of small businesses into telecommunications markets as required by § 257(a).⁹

The Commission is directed by both §§ 257(a) and 309(j)(4)(D) to remove regulatory obstacles as well as to advance procedures designed to ensure participation in spectrum-based services for small businesses. Section 257(a) has been interpreted to apply to minority and women-owned small businesses because of Congressional concerns about the under representation of minorities and women as owners in the telecommunications marketplace. Including minorities and women within the class of small businesses is squarely supported by § 257(a)'s legislative history.¹⁰ Section 309(j) refers explicitly to small businesses, women, minorities and rural telephone companies in several of its provisions.

To the extent that C and F Block debt obligations under the current installment payment plan negatively affect the ability of designated entities to procure necessary capital and roll-out their PCS services, those debt obligations are a market entry barrier.

There is no doubt that restructuring the PCS installment payments is fully within the Commission's jurisdiction to the same degree that the creation of the present plan was within the Commission's jurisdiction. Moreover, the consuming public will benefit by enabling current C and F Block licensees to adequately finance and roll out their PCS services in a timely and quality-driven fashion. Conversely, the default of many C and F Block licensees that would likely result from failure to restructure installment payment obligations will delay C Block PCS roll-out by at least two

⁹ *Id.*

¹⁰ *Id.* at ¶ 210 & fn #501.

years , distort the market, and harm consumers by depriving them of the benefits of competition. The Commission is in a position to remove this obstacle, and Commission intervention is justified by the significant number of C and F Block licensees facing serious financing difficulties. Therefore, the Commission should recognize that the current installment payment plan is a market entry barrier that can be eliminated by restructuring debt obligations of the C and F Block licensees in a manner that not only reduces their present financial burden, but also promotes their chances of attracting private investment.

Failure to restructure the PCS payments now will only result in further delays in bringing new services to the public. Payments under the present schedule will either force a slow-down as needed funds are drained away from PCS service build-out, or more likely, they will force multiple defaults across the industry. Multiple defaults would necessitate a reauction, which would *further* delay the PCS build-out. The amount of time required to recover the licenses from defaulting parties, to mount a costly re-auction, to re-distribute the new licenses and complete a new build-out phase could take well in excess of two years.

V. CONCLUSION

For the reasons stated above, NABOB requests the Commission alter the current PCS payment terms by allowing C and F Block licensees to elect the following new terms:

- Defer all payments without any accrual of interest for the first five years of the license term,
- Require interest-only payments in year six,
- Require payments of ten percent of the principal plus interest in each of years seven through nine, and
- Require full payment of outstanding principal and interest at maturity.

NABOB believes that this proposal will adequately address the financing problems facing designated entities who obtained licenses in the C and F Block auctions and which will meet the Commission's public interest policies and preserve the funds promised to the U.S. Treasury.

Respectfully submitted,

**THE NATIONAL ASSOCIATION OF
BLACK OWNED-BROADCASTERS, INC.**

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June 23, 1997

CERTIFICATE OF SERVICE

I, Kathy Nickens, a secretary in the law firm of Rubin, Winston, Diercks, Harris & Cooke, L.L.P. hereby certify that on June 23, 1997, true copies of the foregoing Comments In the Matter of Broadband PCS C and F Block Installment Payment Issues were hand delivered to the following:

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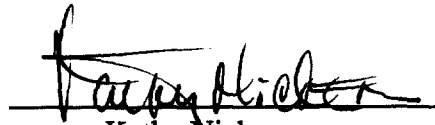
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